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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro

Summary

In the present report, the Special Rapporteur outlines her vision of the mandate and the working methods she intends to use, drawing on the work and experience of her predecessors, in the hope of making progress in implementing the mandate entrusted to her by the Human Rights Council in its resolution 26/8.

In section II, the Special Rapporteur provides an account of her activities since her appointment. In section III, she briefly looks into the main trends and challenges of trafficking in persons, focusing on the link between trafficking in persons and economic trends; trafficking and mixed migration flows; trafficking and conflicts; the protection of children on the move; a gendered perspective of trafficking; and trafficking and social inclusion. In section IV, she defines the legal and policy frameworks of her mandate.

In section V, the Special Rapporteur sets out the agenda of her intended action, guided by the principles of (a) a human rights-based and victim-centred approach to promoting and protecting the human rights of victims of trafficking, especially women and children; (b) a gendered perspective to understand the characteristics of crimes of trafficking and adopt targeted measures; and (c) the best interests of the child in all actions concerning trafficked children. In particular, the Special Rapporteur's focus will be on prevention of all forms of trafficking as a social issue, especially in relation to labour exploitation; promotion and protection of the human rights of victims of trafficking and exploited persons as potential victims; engaging with the private sector and social partners with a view to complementing the criminal justice response with a meaningful social agenda to prevent and combat trafficking in persons.

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The Special Rapporteur will focus on prevention of and protection from all forms of trafficking in persons, in continuation of the broad interpretation of trafficking in persons adopted by the mandate. This would include developing understanding of new and emerging trends of trafficking, such as the consequences and impacts that conflicts and humanitarian crises may have on trafficking; and the link between mixed migration flows and trafficking, which she intends to explore further within existing human rights frameworks. The prevention of trafficking for the purpose of labour exploitation, including of vulnerable or marginalized groups such as migrants, children, minorities, asylum seekers and refugees, will be another aspect of the expert's focus.

Furthermore, the Special Rapporteur will adopt an inclusive and holistic approach to preventing and combating trafficking in persons which requires addressing the systemic/underlying social factors that create the vulnerabilities of victims and potential victims of trafficking. Building on the existing work of the mandate, in particular the basic principles on the right to an effective remedy for victims of trafficking in persons (A/HRC/26/18 and A/69/33797), she will look into remaining gaps in the conceptualization of that right and its operationalization at the national level. Moreover, the Special Rapporteur intends to analyse laws, policies and practices around the world and take stock of promising practices and lessons learned on the provision of unconditional assistance to victims and potential victims of trafficking, including children, who are frequently left without assistance or the necessary support to access remedies, including compensation. She expects to provide guidance to policymakers and practitioners on better implementing the right to assistance and support and maximizing outreach and impact, thereby contributing to more effective prevention and prosecution.

The Special Rapporteur is of the view that additional guidance would be necessary to better equip States for the actions required to comply with their obligations to exercise the principle of due diligence, and to ensure accountability for the rights of trafficked persons by preventing trafficking, investigating and prosecuting traffickers, assisting and protecting victims of trafficking and providing access to remedy.

The Special Rapporteur expects to engage with all stakeholders to address trafficking effectively by partnering and engaging with States and non-State actors. She will also consider civil society organizations as strategic partners — not only service providers — to be included in the process of designing and implementing targeted anti-trafficking measures.

Additionally, the Special Rapporteur will continue reaching out to the private sector, in particular engaging with businesses and employers, as well as trade unions, to look out for possibilities for public-private partnerships aimed at establishing effective actions to prevent and combat trafficking. Such actions, including State action plans or other regulations, will increase awareness of the risks that trafficking entails for businesses and employers, and encourage them to commit themselves to take action to eradicate trafficking, especially from their supply chains. To that end, the Special Rapporteur will bring together businesses in selected sectors to exchange experiences and practices with each other, review their assessment protocols through the lens of trafficking prevention, pilot the use of benchmarks and indicators and encourage multi-stakeholder initiatives, where they exist, to respect human rights and combat trafficking in persons, including the establishment of complaint mechanisms enabling vulnerable workers to report exploitation.

In the final section, the Special Rapporteur sets out the methodology she intends to adopt in carrying out her mandate, which includes the conduct of country visits and the production of country reports, the development of thematic expertise and checklists to shape international standards, the promotion of clarity around trafficking and fleshing out the substantive content of key trafficking issues. In order to respond effectively to reliable allegations of human rights violations and protect the rights of actual or potential victims of

trafficking, she will communicate cases to States, requesting clarification and action in accordance with the established procedure. Finally, the Special Rapporteur will strengthen the mandate's engagement with other United Nations human rights mechanisms, including relevant special procedures mandates, treaty bodies and the universal periodic review. She also intends to fight trafficking in cooperation with regional, subregional and national mechanisms, including national coordinating bodies, national rapporteurs or equivalent mechanisms, and national human rights institutions.

Contents

		Paragraphs	*Page*
I.	Introduction	1	5
II.	Activities carried out by the Special Rapporteur	2–6	5
	A. Participation in conferences and consultations	2–5	5
	B. Country visits	6	5
III.	Emerging trends and challenges	7–28	5
	A. Trafficking in persons and economic trends	7–10	5
	B. Trafficking and mixed migration flows	11–13	6
	C. Trafficking and conflicts	14–17	7
	D. Protecting children on the move	18–21	8
	E. A gendered perspective to trafficking	22–26	9
	F. Trafficking and social inclusion	27–28	9
IV.	Legal and policy framework	29–17	10
	A. International human rights mechanisms	30–33	10
	B. Regional human rights mechanisms	34–47	11
V.	Agenda setting	48–68	14
	A. Focus on prevention of all forms of trafficking in persons	52–57	15
	B. Focus on promotion and protection of the human rights of victims	58–64	16
	C. Engaging with States, the private sector and social actors	65–68	17
VI.	Methods of work	69–82	18
	A. Country visits	70–72	18
	B. Thematic studies and checklists	73–74	19
	C. Consultation and cooperation	75–77	19
	D. Communication with victims	78–79	20
	E. Cooperation with United Nations human rights mechanisms and organizations	80–82	20
VII.	Conclusion	83	21

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 26/8. It outlines the activities of the Special Rapporteur on trafficking in persons, especially women and children and contains a thematic analysis of the Special Rapporteur's vision of her mandate.

II. Activities carried out by the Special Rapporteur

A. Participation in conferences and consultations

2. On 8 October 2014 in Vienna, the Special Rapporteur was part of a panel on the theme of the United Nations Office on Drugs and Crime (UNODC) issue paper on the key concept of consent, held on the margins of the seventh session of the Conference of Parties to the United Nations Convention against International Organized Crime.

3. On 24 November 2014 in Vienna, she made a statement during the launch of the UNODC *Global Report on Trafficking in Persons 2014*.

4. On 10 and 11 December 2014 in Geneva, she took part in a panel discussion on addressing the drivers of irregular migration through a comprehensive approach, during the Office of the United Nations High Commissioner for Refugees (UNHCR) Dialogue on Protection Challenges: Protection at Sea.

5. On 13 March 2015 in Geneva, she addressed the twenty-eighth session of the annual meeting of the International Coordination Committee of National Human Rights Institutions for the protection of human rights.

B. Country visits

6. The Special Rapporteur visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. The report on the visit is contained in the addendum to the present report. She thanks the Government for its cooperation prior to and during the visit.

III. Emerging trends and challenges

A. Trafficking in persons and economic trends

7. Trafficking in persons, especially women and children, is a gross human rights violation. It is also a lucrative crime that generates US$150.2 billion per year in illegal profits.[1] The flow of trafficking in persons evolves with the changing socioeconomic realities of society and traffickers adapt their modus operandi accordingly.

8. In the age of globalization, trafficking in persons cannot be examined in isolation from the broader socioeconomic realities that drive it, nor should it be tackled only from a criminal perspective. Factors such as poverty and inequality, lack of educational opportunity and access to health care, gender discrimination, including gender-based

[1] International Labour Office, *Profits and Poverty: the Economics of Forced Labour* (2014), p. 13.

violence, racial inequality and migration are some of the underlying factors that cause/contribute to trafficking in persons.

9. No country or region is spared the crime of trafficking in persons, which can occur everywhere — at the national, subregional, regional, transcontinental and international levels. Recent trends reveal that victims tend to be trafficked from poor countries to more affluent ones within a region. Similarly, there is also a correlation between the affluence of a destination country (measured by its gross domestic product) and the share of victims trafficked there from other regions (transregional trafficking). Richer countries attract victims from a variety of origins and countries, whereas less affluent countries are mainly affected by domestic or subregional trafficking flows.[2]

10. Moreover, trafficking in persons has been identified as a problem across a variety of economic sectors, including those integrated into global markets. It has been reported that the economic sectors most exposed to trafficking in persons include agriculture and horticulture, construction, garments and textiles, hospitality and catering, mining, logging and forestry, fishing, food processing and packaging, transportation, domestic service and other care and cleaning work. In those cases, trafficking in persons may be carried out by businesses and/or their business partners, including suppliers, subcontractors, labour brokers or private recruitment agencies, often because of the motivation to derive economic benefits from exploitable labour or services provided by trafficked persons or because of unmonitored or unregulated supply chain practices (see A/67/261, paras. 8–12). It is worth mentioning that in such cases trafficking in persons can and does occur without the transfer of victims from one place to another. The focus should therefore be on the exploitation, rather than the way the person has reached the destination country.

B. Trafficking and mixed migration flows

11. Trafficking in persons, especially women and children, is a multifaceted issue that is often interlinked with so-called mixed migration flows, encompassing various categories of persons on the move, including refugees, asylum seekers, economic migrants and other migrants[3] travelling, mostly in an irregular manner, along similar routes, using similar means of travel, but for different reasons.[4] Trafficking victims do not necessarily immediately enter the mixed migration flow process as trafficked persons, but might become trafficked during their journey or when they reach a transit or destination country. Their migration might often have started out through smuggling, but then have turned into trafficking at a later stage. Initial consent to a migration project, be it regular or irregular, does not imply that a case has necessarily to be qualified as smuggling. Rather, when migrants are placed in abusive and exploitative situations during their journey or at their destination, and when their rights are drastically limited or completely denied, the case in question has to be qualified as trafficking in persons.

12. In fact trafficked persons, like other categories of persons in a migration process, are initially persons pushed into a search for a better life to flee a range of issues, such as poverty, armed conflict, humanitarian crises, torture or other human rights violations, including domestic violence and gender-related persecution. Social and economic vulnerabilities, linguistic isolation, irregular residence status and States' persistent failure to recognize and protect the human rights of vulnerable and/or undocumented migrants

[2] UNODC, *Global Report on Trafficking in Persons 2014*, p. 7.

[3] International Organization for Migration, *International Migration Law: Glossary on Migration* (Geneva, 2004), p. 42.

[4] See www.unhcr.org/4ec1436c9.pdf.

contribute to exploitative activities that occur as a result of trafficking in places of origin, transit and destination (A/HRC/26/37/Add.2, para. 46). This is particularly prevalent in some sectors in countries of destination that have a rapidly growing demand for low-cost, low-skilled migrant labour, and that are thus prone to labour exploitation.

13. Moreover, increasingly restrictive and exclusionary immigration policies, including criminalization and detention of irregular migrants, insufficient channels for regular migration and family reunification, and lack of regular access to the labour market for asylum seekers, refugees and migrants, while rarely achieving their purpose, further contribute to an increase in the exploitation of migrants, including through trafficking (A/HRC/26/37/Add.2, para. 46).

C. Trafficking and conflicts

14. Violent conflicts and humanitarian crises fuel trafficking in persons. Situations such as the persecution of minorities, arbitrary detention, torture, rape, kidnapping and enforced disappearance, the destruction of homes, increased food prices and progressively scarce access to water and sanitation, which increase the risk of illness and starvation, lead to forced internal and international displacement of the population and forced migration. In their search for a safer and better life, many fall prey to traffickers and exploiters.

15. Trafficking is a feature of armed conflict as well as of post-conflict situations[5] and usually has a strong gender dimension. For instance, men and boys are trafficked for the purpose of supplying combatants to supplement fighting forces. Armed conflicts also increase the risk of women and girls being sexually exploited, which includes being abducted and forced into sexual slavery and/or forced prostitution.[6] Those victims may be transported across international borders before being sold and trafficked to other regions or countries.[7] They can also be trafficked for the purposes of forced labour for armies and armed groups. In addition, arranged marriages or false promises of domestic work abroad that are expected to provide children with a better life often render them vulnerable to trafficking for the purposes of commercial sexual exploitation and forced labour, including domestic servitude. Furthermore, paramilitary groups can wreak havoc on communities during armed conflicts, often forcing children to become soldiers and workers, including in the illegal drug trade.

16. Recent trends show that people fleeing conflict and emergency situations to seek asylum increasingly risk their lives in unsafe travel conditions at sea and on land. Those who survive the perilous journey are at a higher risk of trafficking because of their desperation and lack of viable options. They face continued uncertainty, physical, emotional and psychological insecurity, financial strain and lack of legal and/or social inclusion in their host communities. That lack of inclusion means they have little access to education, health care and housing. It also means they face significant barriers in accessing jobs in the formal labour market and can often only find work in the informal economy. By its very nature, the informal sector is unregulated, making it an ideal environment for unscrupulous employers and/or intermediaries to exploit and traffic workers. With the

[5] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights and Human Trafficking*, Fact sheet No. 36, p. 43.

[6] See In-depth study on all forms of violence against women: report of the Secretary-General (A/61/122/Add.1), para. 143.

[7] See the report of the Special Rapporteur on violence against women, its causes and consequences, Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997–2000) (E/CN.4/2001/73), para. 53.

considerable pressure on children to help provide financial stability to their families during humanitarian crises, those children may not only be vulnerable to trafficking, but they will also be more likely to work in the unregulated informal sector, as they do not receive an education.[8]

17. In post-conflict situations, the association between military, peacekeeping, humanitarian and other international personnel and private contractors, organized crime and the growth of trafficking in women and children for sexual exploitation has raised global concerns.[9] It has been reported that an international presence fuels the demand for work and services produced through trafficking and exploitation, in particular sexual services and forced labour. Various factors, such as a vulnerable population and fragile/non-existent institutions, including weak law enforcement, can combine to create a climate of impunity in which international personnel involved in criminal exploitation and trafficking are not investigated, apprehended or prosecuted.[10] Moreover, unclear contractors' engagement regulations are likely to fuel abusive practices the dynamics of which have not yet been fully understood, such as deceptive recruitment practices in countries of origin, followed by exploitative employment by military contractors in conflict areas.

D. Protecting children on the move

18. Trafficking of children is on the increase globally, with girls being affected the most. The recently released *Global Report on Trafficking in Persons 2014* also notes significant regional differences concerning child trafficking, with children comprising a majority of detected victims of trafficking in Africa and the Middle East.[11]

19. The mandate's work has confirmed that girls and boys are trafficked for a variety of reasons, including for purposes of sexual exploitation, such as in prostitution and in the production of child pornography. Furthermore, they are trafficked for forced and exploitative labour in farms and factories and on fishing boats, for forced criminal activities, for forced and organized begging, and for domestic servitude in private households. While much trafficking of children involves movement across international borders, many countries experience the phenomenon of internal child trafficking.

20. The mandate found that in certain regions, trafficked children, like adults, are often obliged or induced by their traffickers and exploiters to commit crimes,[12] inter alia, pickpocketing, burglary, and drug cultivation and transportation. In spite of non-punishment clauses in regional and international legal instruments,[13] the children are often then prosecuted, imprisoned and/or deported for the illegal activities they have carried out as a direct consequence of their situation as trafficked persons, instead of being considered as victims of trafficking.

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[8] UNHCR, *The Future of Syria: Refugee Children in Crisis* (2013).

[9] UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008), p. 98.

[10] OHCHR, *Human Rights and Human Trafficking*, pp. 47–48.

[11] UNODC, *Global Report on Trafficking in Persons 2014*, p. 11.

[12] See, for example, A/HRC/23/48/Add.2, para. 28, A/HRC/26/37/Add.4, paras. 16 and 17, and A/HRC/20/18/Add.2, para. 16.

[13] See, for example, Council of Europe Convention on Action against Trafficking in Human Beings, art. 26; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, principles 7 and 8; Basic principles on the right to an effective remedy for trafficked persons, art. 7 (f) (A/69/33797, annex); United Nations Global Plan of Action to Combat Trafficking in Persons (General Assembly resolution 64/293, annex).

21. Child victims of trafficking need specific assistance, protection and support that often differ substantially from those given to adults and they require child-specific and child-centred measures in relation to identification, protection and assistance that are based on the principles and provisions of existing human rights law (A/HRC/26/37/Add.2, paras. 39–42). In particular, appropriate procedures must be put in place to assess the best interests of the child in every case, before any decision is made regarding the child concerned, including assistance measures and eventually repatriation.

E. A gendered perspective to trafficking

22. Women are significantly involved in trafficking in persons, both as victims and offenders. Data regarding women are among the most interesting findings in the UNODC *Global Report on Trafficking in Persons 2014*, which confirms that women and girls are disproportionately exploited not only for the purposes of sexual but also labour exploitation. In some regions, such as in South and East Asia, in Africa and the Middle East, women are even the majority of people exploited as forced labour.

23. Men and boys can also become victims of trafficking, particularly for forced labour and to a lesser extent for sexual exploitation. However, lack of awareness about the involvement of men as trafficked persons has resulted in identification failures, as well as significant discrimination against male victims, particularly in terms of access to protection and assistance (A/HRC/26/37/Add.2, para. 34).

24. With regard to perpetrators, while the majority of traffickers are men, women constitute 28 per cent of convicted trafficking offenders.[14] It is not uncommon for women victims of trafficking to be convicted for offences connected with, or arising out of, their trafficking situation, as a result of coercion by their perpetrators to undertake criminal activities. In those situations, they often come to the attention of the authorities primarily as offenders, whilst they should rather be identified as victims of trafficking. On the other hand, in some cases women start out as victims of trafficking and, as a means of escaping their own victimization, turn into perpetrators, undertaking the most visible and dangerous criminal tasks. In that regard, the mandate has noted the involvement of women traffickers in areas such as the recruitment and controlling of children for forced labour and domestic servitude, and of women and girls for sexual exploitation (A/HRC/23/48/Add.2 and A/HRC/26/37/Add.4).

25. Some forms of trafficking mostly involve women and girls, who comprise the vast majority of people trafficked for sexual purposes and for labour exploitation in domestic servitude. Moreover, women are also trafficked for the purpose of forced and servile marriages (A/HRC/21/41).

26. Assistance and support measures should take into account a gendered perspective, building upon good practices in relation to the field of sexual exploitation, especially those based on solidarity and the help that women can provide to each other, and that survivors can provide to actual, potential and presumed victims of trafficking.

F. Trafficking and social inclusion

27. The notion of social inclusion of victims of trafficking is a well-established element in the context of integration/reintegration of victims in the country of destination or in their

[14] UNODC, *Global Report on Trafficking in Persons 2014*, p. 10.

home country.[15] The social inclusion of victims of trafficking prevents their further victimization and is also a preventive measure against retrafficking.

28. Social inclusion options for victims of trafficking, such as access to housing, social protection, health care, education and employment, are vital in countries of destination, transit and origin. In most cases, the capacity of countries to offer viable long-term social inclusion options for victims, in particular those returning to their country of origin, is limited owing to factors such as poverty, unemployment and weak social structures. On the other hand, in countries of destination social inclusion is hampered by a number of factors, including restrictive migration policies and poor labour market regulations. As a result, in many countries trafficked persons, even after being identified as such and having undertaken a rehabilitation and reintegration process, are not allowed to work or regularize their residence status; rather, they are repatriated at the end of criminal proceedings. In the absence of viable social inclusion options for victims of trafficking, it will be difficult to break the cycle of trafficking and retrafficking.

IV. Legal and policy framework

29. Trafficking is a grave violation of a number of human rights, especially the right to liberty and the right not to be held in slavery or involuntary servitude, the right to be free from cruel and inhumane treatment, the right to be free from violence and the right to health. The Special Rapporteur's framework for action will be guided by existing international and regional human rights instruments and principles relating to trafficking in persons.

A. International human rights mechanisms

30. Prior to the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also referred to as the Palermo Protocol), trafficking in persons was addressed in various instruments, including the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Other international normative documents also contain provisions against trafficking of persons, such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the sale of children, child prostitution and child pornography.

31. In December 2003, the Palermo Protocol entered into force and has since been ratified by many States.[16] The purposes of the Protocol are to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of trafficking, with full respect for their human rights; and to promote cooperation among States parties in order to meet those objectives. UNODC offers practical

[15] Basic principles on the right to an effective remedy for trafficked persons, art. 9 (A/69/33797, annex); OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, guideline 6; Council of Europe Convention on Action against Trafficking in Human Beings, art. 15, para. 4.

[16] As at 27 January 2015, the Protocol had 117 signatories and 166 parties.

help to States in the implementation of the Protocol, giving guidance for the drafting of laws and the creation of comprehensive national anti-trafficking strategies, and assisting with resources to implement them.

32. In addition, several ILO instruments are also of relevance to combating trafficking in persons, including ILO Conventions No. 29 (1930) concerning Forced or Compulsory Labour; No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; No. 105 (1957) concerning the Abolition of Forced Labour; No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation; No. 138 (1973) concerning Minimum Age for Admission to Employment; and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Of particular importance is the Protocol to the Forced Labour Convention, 1930 which came into force in 2014, complementing ILO Convention No. 29 and re-enforcing existing international law. The Protocol creates new obligations to prevent forced labour, to protect victims and to provide access to remedy, such as compensation for material and physical harm. It is also supported by a recommendation that provides technical guidance on its implementation.

33. ILO Convention No. 189 (2011) concerning decent work for domestic workers, which entered into force in 2013, and its Recommendation No. 201 extend basic labour rights to domestic workers, including those in private households, who are without clear terms of employment, unregistered and excluded from the scope of labour legislation. It stresses States' duty of diligence in effectively eliminating child labour and sets a minimum age for domestic workers.

B. Regional human rights mechanisms

34. The regional specificities of trafficking in persons necessitate regional and subregional anti-trafficking instruments and mechanisms that are at the interface of international action and local realities.

1. Europe and Central Asia

35. The Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force in February 2008, applies to all forms of trafficking, whether national or transnational, all victims of trafficking and all forms of exploitation. The Convention is open to ratification by States which are not members of the Council of Europe. The countries which have signed up to the Convention are monitored by the Group of Experts on Action against Trafficking in Human Beings. The Council of Europe also supports governments in the implementation of the Convention and the recommendations emerging from its monitoring process.

36. The Organization for Security and Cooperation in Europe (OSCE) has been addressing trafficking in persons as a major concern since 2000, when the first Ministerial Council decision on enhancing OSCE efforts to combat trafficking in human beings was taken. In 2003, the OSCE Action Plan to Combat Trafficking in Human Beings was adopted and in 2006 the Special Representative and Coordinator for Combating Trafficking in Human Beings was appointed. In 2007, a Platform for Action against Human Trafficking was adopted, and in 2013, the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later was endorsed.

37. In Central Asia, in 2005 the Commonwealth of Independent States (CIS) adopted the Agreement on the Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues, followed by the adoption in 2006 of the Decision on the Programme of Cooperation of the CIS Member States in Combating Trafficking in

Persons for the period 2007–2010. Finally, a CIS draft Programme of Action for 2007–2010 was adopted, to support the implementation of the 2005 Agreement and facilitate efficient cooperation at the regional level for the prevention and suppression of trafficking in persons and the rehabilitation of victims.

2. Middle East and North Africa

38. Within the framework of the League of Arab States, the Arab Initiative to Build National Capacities to Combat Human Trafficking in the Arab Countries was launched in March 2010 by the Council of Arab Ministers of Justice. The Initiative is aimed at combating trafficking in persons through developing the criminal justice system in Arab States, for example by the capacity-building of law-enforcement bodies, prosecutors, members of the judiciary and the media.

39. Other regional instruments for addressing trafficking in persons are the Arab Framework Act on Combating Trafficking in Persons (2008), which serves as a platform from which to spearhead action against trafficking in persons, and the Arab Charter of Human Rights (2008), which, inter alia, prohibits trafficking in human organs; and slavery and servitude, forced labour and trafficking in persons for the purposes of prostitution or sexual exploitation or the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict; and has extensive provisions on the right to decent work freely chosen and on the right to development.

40. The Gulf Cooperation Council has also taken initiatives to curb trafficking in persons in the subregion, including through capacity-building workshops and the development of guiding principles to combat trafficking in persons in the region.

3. Latin America and the Caribbean

41. In this region, the 1994 Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)[17] contributed to the anti-trafficking legal framework. Other instruments, such as the 2005 Montevideo Declaration against Trafficking in Persons in MERCOSUR (Common Market of the South) and Associated States, the 2008 Recommendations of the First International Congress of MERCOSUR and Associated States on Trafficking in Persons and Child Pornography, the Work Plan against Trafficking in Persons in the Western Hemisphere (2010–2012, later extended for two years, and 2015–2018), the Inter-American Declaration against Trafficking in Persons ("Declaration of Brasilia", 2014) and the Brazil Declaration on a Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (Cartagena+30, 2014), further consolidated regional efforts to eradicate human trafficking.

42. The commitment to promote effective measures to combat trafficking in persons was reaffirmed by the member States of a number of regional and subregional organizations, in particular MERCOSUR, the Andean Community, the Union of South American Nations, the Central American Integration System and the Organization of American States (OAS). OAS is strongly engaged in combating trafficking in persons on the American continent. At the political level, the OAS General Assembly has adopted resolutions that express the commitment of member States in that regard. At the level of the secretariat, the OAS Anti-

[17] Article 2 of the Convention defines violence and article 2 (b) lists trafficking in persons as a form of violence against women.

Trafficking in Persons Unit provides specialized training and assistance to member countries to implement the Palermo Protocol and the recommendations stemming from the OAS meetings of national authorities on trafficking in persons.

4. Asia-Pacific region

43. A number of initiatives have been launched to combat trafficking in persons in the Asia-Pacific region, including the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted by the States members of the South Asian Association for Regional Cooperation in 2002. In addition, the Association of Southeast Asian Nations (ASEAN) launched its first programme, the Asia Regional Cooperation to Prevent People Trafficking Project (2003–2006), which was implemented by the Government of Australia. The Project focused on criminal justice responses to trafficking in partner countries. Following its success, the Project was extended in 2011 as the Asia Regional Trafficking in Persons Project. ASEAN also adopted the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004), followed by the adoption of a work plan to implement the Declaration. An ASEAN convention on trafficking in persons and a regional plan of action are expected to be finalized and adopted in 2015.

44. In the Greater Mekong subregion, the Coordinated Mekong Ministerial Initiative against Human Trafficking, comprising six States (Cambodia, China, the Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam), has been addressing trafficking issues since 2004 through subregional plans of action, task forces at various levels and other mechanisms.

45. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, a consultative mechanism launched in 2002 by ministers of over 50 countries in the Asia-Pacific region and beyond, also works on practical anti-trafficking and anti-smuggling measures in the region.

5. Africa

46. The African Charter on Human and Peoples' Rights,[18] the African Charter on the Rights and Welfare of the Child,[19] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[20] provide the legal framework for combating trafficking in persons. Additionally, the Migration Policy Framework for Africa (2006) provides the overarching policy of the African Union on migration issues, including human trafficking. The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006) provides specific recommendations to be implemented by regional economic communities and member States on prevention of trafficking, protection of victims of trafficking and prosecution of those involved in the crime of trafficking. Furthermore, the African Union Horn of Africa Initiative on Human Trafficking and Smuggling (Khartoum Declaration, 2014) focuses on, inter alia, areas such as addressing the social, economic, environmental, cultural, security and political factors that make people vulnerable to human trafficking.

47. Subregional initiatives include the Economic Community of West African States (ECOWAS) Declaration on the Fight against Trafficking in Persons (2001) and the

[18] Arts. 2, 5, 15, 18, paras. 3, 60 and 61.

[19] Art. 29 in particular.

[20] Article 4 (2) (g) prohibits trafficking in children and women and requires States to prosecute the perpetrators of such trafficking and protect those at risk. Other relevant articles are articles 2, 3, 11, 13 and 24.

ECOWAS Initial Plan of Action against Trafficking in Persons (2002–2003). Subsequent plans of action against trafficking in persons have also been adopted. Moreover, the ECOWAS and Economic Community of Central African States biregional Plan of Action to Combat Trafficking in Persons, especially Women and Children (2006–2009), the related resolution and a multilateral cooperation agreement have further strengthened subregional initiatives to curb trafficking. The biregional Plan of Action reaffirmed the ECOWAS Initial Plan of Action and extended efforts to combat trafficking into the Central African region. In addition, the Southern African Development Community Plan of Action to combat trafficking in persons, the revised African Union Plan of Action on Drug Control and Crime Prevention (2007–2012 and 2013–2017) can be cited as examples of subregional initiatives. Joint cooperation between intergovernmental organizations, such as between the United Nations and the African Union, in the Asian-African Legal Consultative Organization or within the Commonwealth can be cited as joint actions to address human trafficking.[21]

V. Agenda-setting

48. Building upon the work of her predecessors, and in accordance with Human Rights Council resolution 26/8, the Special Rapporteur aims to (a) promote the prevention of trafficking in persons in all its forms and the adoption of effective measures to uphold and protect the human rights of victims of trafficking in persons; (b) promote the effective application of relevant international norms and standards and contribute to their further improvement; (c) identify, share and promote good practices in order to uphold and protect the human rights of victims of trafficking in persons and to identify protection gaps, including with regard to the identification of victims of trafficking in persons; and (d) examine the impact of national, regional and international anti-trafficking measures on the human rights of victims of trafficking in persons with a view to proposing adequate responses to challenges.

49. To that end, the Special Rapporteur will advocate a human rights-based and victim-centred approach to promote and protect the human rights of victims of trafficking, especially women and children, guided by international human rights law and standards, including the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

50. The Special Rapporteur will adopt a gendered perspective on trafficking which acknowledges that both women and men can be involved in trafficking and provides a better understanding of how to address the similarities and differences in the trafficking experience of women and men. In her work, she plans to pay particular attention to understanding the characteristics of trafficking crimes from a gender perspective to ensure the adoption of targeted measures. A gender perspective is necessary to understand why women constitute the majority of victims of trafficking in certain sectors, and why men are less likely to be identified as victims of trafficking and less likely to be reached by existing support measures for trafficked persons. In addition, the compounded effects of various types of exploitation which affect women disproportionately should be examined. For instance, in the agriculture sector, women trafficked for labour exploitation who work in the fields during the day are often sexually exploited at night by fellow workers and/or brokers and intermediaries.

51. Finally, the Special Rapporteur will be guided by the best interests of the child in all actions concerning trafficked girls and boys, whether undertaken by public or private

[21] A/HRC/10/16, paras. 24 and 25.

institutions, courts of law, administrative authorities or legislative bodies. She expects to look into existing identification, protection and assistance gaps in relation to children who have been trafficked for various purposes, with the aim of providing insights on issues such as the procedures for determining the best interests of the children, access to justice, provision of unconditional assistance and effective remedies including compensation for such children.

A. Focus on prevention of all forms of trafficking in persons

52. In continuation of the broad interpretation of trafficking in persons adopted by the mandate, the Special Rapporteur will embrace and further develop a comprehensive understanding of trafficking for any illicit purpose. This includes — but is not limited to — trafficking in adults and children for sexual purposes, for labour exploitation, for exploitative adoption and for participation in armed conflicts; trafficking in women, men and children for forced labour and other forms of exploitation, such as exploitation in criminal or illicit activities, or forced and organized begging; trafficking in women and girls for forced and servile marriages, sexual exploitation and forced labour, including domestic servitude; and trafficking in persons for the removal of organs (A/HRC/26/37, para. 36).

53. The Special Rapporteur wishes to underline that trafficking should be seen and tackled not only as a crime, but as an economic and social phenomenon, linked with global economic trends. She believes that an inclusive and holistic approach to the prevention of trafficking in persons requires addressing the systemic/underlying social factors that create vulnerabilities in victims and potential victims of trafficking.

54. With a view to preventing all forms of trafficking, the Special Rapporteur also intends to develop, through research, thematic studies and other means, an understanding of new and emerging trends in trafficking, such as the consequences and impacts that conflicts and humanitarian crises may have on trafficking, on which there is a dearth of information.

55. In addition, she wishes to explore further the link between mixed migration flows and trafficking, in order to recommend effective measures, aimed at preventing exploitation or further exploitation of socially vulnerable people fleeing death, torture or other forms of violence such as domestic violence, or unemployment, destitution and extreme poverty. That includes exploring ways to increase opportunities for regular migration and family reunification, and for non-exploitative employment, with the aim of preventing trafficking by ensuring full respect of migrants' rights, in line with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[22]

56. Furthermore, the Special Rapporteur expects to focus on the prevention of labour exploitation, including of vulnerable or marginalized groups such as migrants, children, national, ethnic or racial minorities, asylum seekers and refugees, by engaging with businesses, trade unions and other relevant parties, and by further exploring ways to better regulate and monitor the activities of recruitment and employment agencies, with a view to preventing abusive practices leading to debt bondage, trafficking and exploitation.

57. While the Special Rapporteur intends to accord priority to those thematic areas, she will also continue to follow up on thematic concerns addressed by her predecessors, such as the issue of trafficking for the purpose of sexual exploitation, including of children, especially as a consequence of conflicts, and in connection with labour exploitation, including domestic servitude.

[22] General Assembly resolution 45/158.

B. Focus on promotion and protection of the human rights of victims

58. The Special Rapporteur believes that the human rights of victims of trafficking should be placed at the centre of protection measures taken to address trafficking. That includes the protection of victims from further exploitation and harm, and their access to adequate assistance, support and remedies.

59. Comprehensive assistance and support to victims and potential victims of trafficking are crucial for an effective fight against trafficking in persons on the one hand, and are instrumental to accessing justice and effective remedies on the other hand. Not all trafficked and exploited persons will be able or willing to report their exploiters or participate in legal proceedings against them. All victims should, however, be enabled to do so if they wish.

60. Currently, assistance and support to exploited and trafficked persons are most commonly dependent on three main factors: a person's immigration/residence status; the initiation of criminal proceedings for the crime of trafficking; and cooperation with criminal justice actors. As a result, assistance, support and ultimately access to remedies remain out of reach for a large number of trafficked and exploited persons who are afraid of being deported or detained, and/or who distrust the authorities and are afraid of losing the possibility of pursuing their migration project. In addition, there are indications and concerns that the current set-up of most assistance and support mechanisms might result in discrimination against victims who are not willing or able to cooperate with law enforcement. Assistance and support to child victims of trafficking and other exploited and vulnerable children also require that they be provided with appropriate assistance and protection, taking full account of their human rights and special needs.

61. In particular, protection and assistance should not be made conditional upon the capacity or willingness of victims to cooperate with law enforcement agencies, regardless of whether legal proceedings are initiated or charges pressed against their traffickers and exploiters, or whether the crime has been legally qualified as trafficking or as another or less serious crime. In this regard, the Special Rapporteur expects to further explore the need for unconditional access to a range of support services for victims of trafficking, including children, who are frequently left without assistance or the necessary support to access remedies, including compensation — a situation that exacerbates the risk of further human rights violations.

62. Building on the existing work of the mandate,[23] in particular the basic principles on the right to an effective remedy for trafficked persons (A/HRC/26/18, annex) and A/69/33797), the Special Rapporteur intends to analyse laws, policies and practices around the world and take stock of promising practices and lessons learned on the provision of unconditional assistance to victims and potential victims of trafficking. She expects to provide guidance to policy makers and practitioners on better implementing the right to assistance and support, and maximize outreach and impact, thereby contributing to more effective prevention and prosecution.

63. Additionally, the Special Rapporteur envisages building upon the work of the mandate in the area of protection of the rights of victims of trafficking and access to justice. In that regard, she intends to further follow up on the basic principles on the right to an effective remedy for trafficked persons, which provide for remedies for victims of trafficking, including restitution, rehabilitation, compensation, satisfaction and guarantees

[23] See A/64/290, paras. 91–95, and A/64/290, paras. 80–81. See also UNHCR, Guidelines on International Protection No. 7.

of non-repetition, and call on States to ensure that access to those measures shall not depend on the victim's capacity or willingness to cooperate in legal proceedings. When looking into remaining gaps in the conceptualization of the right to an effective remedy and the operationalization of the basic principles at the national level, the Special Rapporteur expects to further delve into issues such as the possible types of trafficking exploitation covered by the principles, what the barriers to access to remedy are, whether the nature of the State responsibility affects the content of the reparation, the available forms of reparation, the accessibility of compensation funds to victims and the conditions for the protection of victims' rights in out of court settlements .

64. Moreover, international law mandates States to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, to assist and protect victims of trafficking and to provide access to remedy. As trafficking in persons is most often perpetrated by non-State actors, compliance with the due diligence principle is critical to ensure State accountability for the protection of the rights of victims and potential victims. However, the standard of due diligence as it relates to trafficking in persons has not been comprehensively articulated, either by the mandate of the Special Rapporteur or elsewhere. Therefore, the Special Rapporteur is of the view that additional guidance would be necessary to better equip States for the actions required to comply with their due diligence obligations.

C. Engaging with States, the private sector and social actors

65. Trafficking in persons requires a concerted effort by all stakeholders if it is to be effectively addressed. In view of this, the Special Rapporteur will endeavour to continue partnering and cooperating with States, both those that are parties to the Palermo Protocol and those that are yet to ratify it. She is also committed to continue engaging with non-State actors on the role they can or should play in preventing and responding to trafficking. In particular, she will consider civil society organizations as strategic partners — not only service providers — to be included in the process of designing and implementing targeted anti-trafficking measures.

66. Trafficking feeds into a global market that seeks out cheap, unregulated and exploitable labour and the goods and services that such labour can produce. With regard to the private sector, the key role that business actors can play in removing trafficking in persons from the supply chains is widely acknowledged.

67. The mandate has devoted attention to the extent to which trafficking in persons has emerged as a key challenge and risk in a wide range of industries and sectors integrated into global markets, despite corporate social responsibility programmes. This includes a thematic report to the General Assembly (A/67/261) on the issue of trafficking in global supply chains which examined the different ways human trafficking manifests itself in the global economy, the response of global businesses, existing and emerging strategies to combat abuse, and the immediate and long-term steps necessary for business leaders to take effective and sustainable action. That work was followed in 2012 by an expert meeting with representatives of business enterprises, trade unions, non-governmental organizations, academia and international organizations that focused on understanding the relationship between human trafficking and global supply chains, and the risks run by workers and business.[24] In addition a panel on preventing trafficking in global supply chains was convened by the previous mandate holder on the fringe of the annual Forum on Business

[24] Available from www.ohchr.org/EN/Issues/Trafficking/Pages/GlobalSupplyChains.aspx.

and Human Rights in 2013.[25] The mandate has also developed a draft checklist of indicators and benchmarks that enterprises could use to assess the risks of human trafficking and forced labour in their supply chains. They are intended to build on and complement the Guiding Principles on Business and Human Rights, as well as existing important initiatives developed by enterprises themselves and civil society organizations (see A/HRC/23/48/Add.4).

68. The Special Rapporteur will continue to build on the work of the mandate in that field and capitalize on the momentum created by new legislation and initiatives from businesses and civil society to free the supply chains from trafficking, forced labour and slavery. On the basis of her global mandate, international standing and expertise on issues relating to trafficking in persons, the Special Rapporteur intends to continue engaging with businesses in order to encourage the establishment and effective implementation of self-regulatory action (codes of conduct and other similar mechanisms) by the private sector, with the aim of increasing awareness of the risks that trafficking entails, and encouraging them to take action to eradicate trafficking from their supply chains. That would entail the mandate holder bringing together businesses in a number of selected sectors to exchange experiences and practices among themselves, review their assessment protocols through the lens of trafficking prevention, pilot the use of the benchmarks and indicators and encourage multi-stakeholder initiatives, where they exist, to operationalize the responsibility of businesses to respect human rights.[26]

VI. Method of work

69. In undertaking her activities, the Special Rapporteur will endeavour to adopt a participatory approach, in the form of consultations and constructive dialogue with all stakeholders, including victims of trafficking, civil society and the private sector.

A. Country visits

70. The Special Rapporteur will continue to undertake country visits to help ground the mandate's understanding of the problem of trafficking in national realities and to forge relationships with those on the front line, while also providing States and their partners with an opportunity to access information, expertise and insight. The factors to be taken into account in selecting country visits are varied and in doing so the Special Rapporteur will follow the usual criteria of special procedures mechanisms.[27]

71. During those visits, she will focus on the nature of the trafficking problem, the key human rights issues and the effectiveness of institutional, legal, judicial, administrative and other mechanisms to protect those rights. She will ensure that her country visits are widely consultative, involving government officials; victim support agencies and, where appropriate, victims; members of the judiciary and parliamentarians; members of United Nations country offices; and international and non-governmental organizations in the country concerned.

72. In the ensuing reports on her visits, she will highlight the major issues of concern to the mandate; forms and manifestations of trafficking; the legislative and institutional

[25] Available from www.ohchr.org/Documents/Issues/Business/ForumSession2/A-HRC-FBHR-2013-4_en.pdf.

[26] OHCHR, *Guiding Principles on Business and Human Rights* (2011).

[27] Manual of Operations of the Special Procedures of the Human Rights Council (August 2008).

framework; identification of trafficked persons; protection of trafficked persons; prosecution of perpetrators; cooperation with civil society; and international and regional cooperation. She will also provide concrete recommendations to governments and relevant stakeholders on how to tackle the issue of trafficking. As part of her commitment to continuing the work of her predecessors, the Special Rapporteur will also try to follow up on recommendations made in previous reports on countries visited.

B. Thematic studies and checklists

73. The Special Rapporteur will endeavour to develop thematic expertise through studies, reports and other tools, in order to make substantial contributions to poorly understood or new areas of concern. The thematic areas will be carefully chosen on the basis of their relative importance and urgency, as well as the capacity of the Special Rapporteur to make a contribution to shaping international standards and promoting awareness in the chosen area. In this regard, some of the themes the Special Rapporteur has already identified as priorities are to be found in section III of the present report.

74. The Special Rapporteur will actively seek to promote normative clarity around trafficking and to help flesh out the substantive content of key rules and obligations where that is required. That work is expected to result in clear anti-trafficking tools and recommendations, checklists, indicators and benchmarks that are based on existing international standards as recognized in the major human rights treaties as well as the specialist trafficking instruments. To that end, the Special Rapporteur intends to convene consultations and expert group meetings and regular exchanges with a variety of stakeholders.

C. Consultation and cooperation

75. Trafficking in persons is a critical issue for every country, affecting many different groups and cutting across multiple sectors. The range of current and potential stakeholders is accordingly very wide. The Special Rapporteur believes that trafficking will be fought successfully if all stakeholders work in partnership, across borders and across all parts of society. In that regard, she will work together with governments, national rapporteurs and equivalent mechanisms dealing with trafficking in persons, national human rights institutions, intergovernmental organizations and specialized agencies, to promote cooperation and concerted action at the international, regional and national levels. She will also enhance cooperation with existing regional, subregional and national anti-trafficking mechanisms, including national coordinating bodies, national rapporteurs or equivalent mechanisms and national human rights institutions.

76. In carrying out her mandate, the Special Rapporteur will consult civil society and non-governmental organizations working to combat trafficking, as well as persons and institutions with particular expertise (such as academia and certain professional categories). The Special Rapporteur will continue to consult and partner with a wide range of national and local organizations, especially during her country visits.

77. The Special Rapporteur will also reach out to the private sector, engaging with businesses and employers in particular, to look out for possibilities for public-private partnerships that will address the demand for cheap labour in the private sector, unethical recruitment practices and other practices relating to the elimination of trafficking in supply chains.

D. Communication with victims

78. The mandate of the Special Rapporteur focuses on the rights and needs of victims of trafficking and the Special Rapporteur will continue to consult victims and involve them in the work of the mandate. The Special Rapporteur is convinced that the involvement of victims is critical to ensuring that the measures taken to address trafficking benefit those in need; that unintended harmful consequences are anticipated and avoided; and that opportunities for change and improvement are identified in a timely way.

79. The Special Rapporteur is explicitly mandated to respond effectively to reliable allegations of human rights violations with a view to protecting the rights of actual or potential victims of trafficking. In accordance with established procedure, the Special Rapporteur will communicate cases to States, requesting clarification and action.[28]

E. Cooperation with United Nations human rights mechanisms and organizations

80. The Special Rapporteur intends to work in collaboration with other special procedures mechanisms which examine issues relating to trafficking, including but not limited to: the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the sale of children, child prostitution and child pornography; and the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Special Rapporteur will continue to strengthen the work of the trafficking mandate while delineating its intersections with related mandates. In this regard, she will try to identify possible joint initiatives that can complement each other's work, such as joint communications on allegations of human rights violations and the issuance of joint press statements.

81. In the course of her work the Special Rapporteur intends to strengthen the mandate's engagement with relevant treaty bodies[29] in order to create synergy to ensure States' accountability with regard to the issue of trafficking in persons. She will benefit from their expertise and their concluding observations, general comments/recommendations and case law on issues relating to trafficking, to which she also expects to contribute when relevant. She also believes that the universal periodic review contributes to strengthening efforts aimed at combating trafficking in persons as part of a holistic review of a country's human rights situation.

82. The mandate holder also values cooperation with United Nations agencies, international organizations and existing coordination mechanisms around the world and intends to build on those partnerships to consolidate a collaborative approach to the fight against trafficking.

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[28] See www.ohchr.org/EN/Issues/Trafficking/Pages/complaints.aspx.

[29] Including the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

VII. Conclusion

83. **The Special Rapporteur looks forward to fulfilling the requirements of her mandate, as outlined in Human Rights Council resolution 26/8, and to constructive and fruitful cooperation with diverse stakeholders in all regions of the world. She particularly emphasizes her desire for constructive engagement with United Nations Member States and encourages them to respond positively to her requests for information or for country visits, while emphasizing that the mandate remains available to provide assistance to States and to respond to their requests to the fullest extent possible. The Special Rapporteur reiterates the importance that she places on the role and views of non-governmental organizations, including in providing information to her and engaging with and assisting her fully as she conducts her work on combating trafficking in persons, especially women and children.**